difficulties in becoming competitive at the local level. Based on MCI's claims – for which it offers no factual support – MCI asks the Commission to impose a series of far-reaching conditions on the merger. For the reasons set forth below, the claims of MCI and Inner City Press about the state of local competition in SNET's and SBC's territories are wrong, and the "wish list" of conditions sought by MCI is wholly inappropriate.

1. MCI's Proposed Conditions Must Be Addressed In Other Proceedings

The 1996 Act sets forth a highly detailed regulatory framework aimed at enhancing the competitiveness of the telecommunications industry. The Act imposes specific requirements on ILECs and carefully allocates jurisdictional authority for the implementation and enforcement of the provisions of the Act between state commissions, the FCC and the judiciary. MCI's insistence that the Commission use this proceeding to resolve issues that Congress has expressly made the subject of other forums is nothing more than an attempted end-run around the administrative and judicial processes that are specifically designed to address the issues it raises. This proceeding is simply not the place to resolve MCI's complaints.

In order to address the myriad unfounded allegations made by MCI involving its alleged difficulties in entering the local exchange market in Connecticut, SBC and SNET are submitting herewith an Appendix, which is attached as Exhibit 3, responding to MCI's allegations in detail. As set forth in that Appendix, MCI's unsubstantiated claims are wrong and are the subject of specific pending proceedings at both the federal and state levels. Accordingly, there is no basis for imposing any of the conditions MCI seeks.

While most of MCI's claims are dealt with in the Appendix, we will briefly discuss some of its more outrageous claims here. In particular, we will discuss MCI's requests that the Commission require: (1) the divestiture of SNET's long distance affiliate, SNET America, or

SNET's filing of a "Section 271-equivalent petition at the FCC"; and (2) the reduction of access charges to "efficient forward-looking economic cost."[43]

(a) SNET America Should Not Be Divested

Requiring SNET America's divestiture or the filing of a "Section 271-equivalent petition" would require that the FCC rewrite sections 271 and 272 of the 1996 Act – an action that the FCC lacks the power to undertake. Congress deliberately chose to impose section 271's competitive checklist requirements only on interLATA services offered by a BOC or its affiliates in "in-region" states, which are those states in which a BOC or an affiliate was authorized to offer local exchange service under the AT&T Consent Decree "on the day before the date of enactment of the Telecommunications Act of 1996."[44] Additionally, Congress expressly exempted the provision of "out-of-region" interLATA services from the checklist requirements.[45] Under the 1996 Act, SNET is not a BOC, and Connecticut is not an "in-region" state. The section 271 checklist therefore does not apply to SNET. Nothing in the 1996 Act dictates how SBC or any other BOC must enter long-distance markets out-of-region. The 1996 Act simply makes it clear that SBC and other BOCs may do so. SBC chose to do so in Connecticut via this merger. Thus, the Commission lacks authority to impose 271/272-type conditions on the provision of long distance services in Connecticut.

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[43] MCI Comments, p. 10. MCI asks that, if SNET America is not divested, then "SNET America should be given the same state regulatory treatment as SNET until the provisions of Connecticut Public Act 94-83 are satisfied for reclassification of SNET America services" and that all SNET local customers should be subjected to the Connecticut local balloting process. Id.

[44] See 47 U.S.C. § 271(h)(i)(1).

[45] See 47 U.S.C. § 271(b)(2).

(b) Access Charge Reductions Should Not Be Ordered

MCI's contention that the Commission should impose access charge conditions on the merger is likewise unwarranted. The basis for calculation of interstate and intrastate access charges is the subject of matters currently pending before the FCC and the Connecticut Department of Public Utility Control ("CDPUC"), and ruling on this issue here would thwart these on-going proceedings.[46] Moreover, MCI's proposal that SNET America be subject to the regulatory treatment given SNET until the requirements of Connecticut Public Act 94-83 ("Public Act 94-83")[47] are satisfied asks the Commission to interfere in a purely state law matter. Similarly, local balloting was a condition imposed by the CDPUC in response to SNET's corporate restructuring,[48] and remains before the DPUC today in an open implementation proceeding.[49] The Commission has no authority to impose a balloting requirement in connection with this merger, and it would be poor public policy for the Commission to attempt to micro-manage competitive issues that are not only clearly within the jurisdiction and competence of state regulators, but also, are before them in pending proceedings.

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[46] See In re Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, First Report and Order, 12 FCC Rcd. 15,982 (1997) ("Access Charge Reform First Report and Order"); In re DPUC Investigation into the Intrastate Rates and Charges Incurred by Long Distance Carriers to Access the Pub. Switched Telecomm. Network, Dkt No. 96-04-07, (Conn. D.P.U.C. filed Apr. 8, 1996) (decision expected June 1998) ("CDPUC Intrastate Rates Investigation").

[47] Act Implementing the Recommendation of the Telecommunications Task Force, 1994 Conn. Pub. Acts 83 (codified as amended at Conn. Gen. Stat. Ann. §§ 16-247a-*l* (West Supp. 1998)).

[48] See In re DPUC Investigation of the Southern New Eng. Tel. Co. Affiliate Matters Associated with the Implementation of Public Act 94-83, Decision, Dkt No. 94-10-05, <http://www.state.ct.us/dpuc> at 3-4, 59-61 (Conn. D.P.U.C. June 25, 1997).

[49] In re DPUC Administration of the Local Exchange Co. Election Process, Dkt No. 97-08-12 (Conn. D.P.U.C. filed Aug. 14, 1997).

MCI's other complaints, which are discussed in the Appendix, are invalid for similar reasons. Accordingly, there is no basis for imposing the conditions it seeks.

2. Inner City Press's Attempt To Rely On The Selwyn Report Is Misplaced

Inner City Press contends that "there ARE competition-related issues which must be explored in this proceeding."[50] Inner City Press does not, however, explain what these issues are. Instead, it simply alludes to two news articles: a piece from Communications Daily about an AT&T-commissioned report regarding the benefits of SNET's entry into the long-distance market, and an article about consolidation in the Yellow Pages industry. Neither article provides a basis for questioning the pro-competitive benefits of this merger.

The AT&T study cited in Communications Daily disputes the benefits of SNET's entry into the long-distance market.[51] It claims, for example, that SNET does not offer lower long-distance prices than other carriers and that, as a result, there is no evidence that the long-distance market in Connecticut is more competitive than elsewhere. The report argues that, because SNET's long-distance entry has not increased long-distance competition, the "Connecticut Experience" should not be used to support the entry of the BOCs into long-distance markets in other states.

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[50] Inner City Press Petition, p. 8.

[51] AT&T retained Lee Selwyn of Economics and Technology Inc. to prepare the report. Lee L. Selwyn, Economics and Technology, Inc., The "Connecticut Experience" with Telecommunications Competition (1998). Selwyn and his firm have a long history of opposition to the policies of the BOCs, having given testimony and prepared studies for interexchange carriers, user groups, consumer advocates, Internet service providers and the National Cable Television Association on a variety of issues.

The effect of SNET's entry into the Connecticut long-distance market has no bearing in this proceeding. The merger will not, for example, enable SBC to enter any long-distance markets from which it is currently barred. Moreover, the report's conclusion that SNET's long-distance entry has failed to increase competition in Connecticut is incorrect. Since SNET entered the interLATA market in 1994, 40 percent of Connecticut households have abandoned AT&T and switched to SNET[52] because SNET's rates are, on average, 17 percent lower.[53] Today, AT&T's residential market share in Connecticut is between 15 and 25 points less than its nationwide average.[54]

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[52] Roughly nine out of ten customers who left AT&T during that period went to SNET. See J. Grubman, Salmon Brothers, Rpt. No. 2587678, Century Telephone Enterprises, Inc. – Company Report (Sept. 17, 1997), Lexis, Invest Library, SB File, *8. The market shares of the other big interexchange carriers – MCI and Sprint – rose only slightly in this period, indicating that they were not severely affected by SNET's entry and, conversely, that they had little do with AT&T's share loss in Connecticut. See FCC, Long Distance Market Shares Fourth Quarter 1997, at tbls. 4.1-4.3 (1998).

[53] See Decl. of Professor Jerry Hausman at ¶ 18 in In re Application by BellSouth Telecomm., Inc. and Bell South Long Distance, Inc. For Provision of In-Region, InterLATA Services in Louisiana, CC Dkt No. 97-231 (F.C.C. filed Nov. 6, 1997). Dr. Hausman compared AT&T's and SNET's calling plans for Connecticut and concluded that, for a long-distance caller with average time-of-day breakdowns and monthly usage patterns, SNET's rates were 17% lower than AT&T's. A 17% reduction in long-distance rates yields consumer welfare benefits of $6.2 million annually in savings from decreased long-distance rates and $406 million worth of additional long-distance calls per year. These benefits equate to roughly $7 in savings per residential line per month.

[54] At the end of 1995, the first year for which the FCC reported residential market share data, AT&T served 83 percent of all presubscribed residential lines in Connecticut, earned over 71% of residential interexchange revenue, and carried 76% of the state's interexchange toll minutes. See FCC, Long Distance Market Shares Fourth Quarter 1997, at tbls. 4.1-4.3 (1998). By the end of 1996 AT&T's shares of those three measures fell to 45%, 39%, and 36%, respectively. See id.

The other article that Inner City Press cites regarding consolidation in the Yellow Pages industry in fact confirms the pro-competitive aspects of the merger. The two sentences immediately preceding the statistics that Inner City has quoted state:

> SNET Publishing could benefit from SBC Directory Operations' experience in selling multiple products as it ventures into selling cable and Internet yellow pages ads. Meanwhile, SBC could achieve economies of scale by adding SNET Publishing's operations to its existing yellow pages properties – Pacific Bell Directory and Southwestern Bell Yellow Pages.[55]

3. SBC Has Taken Strong Steps To Open Its Local Markets To Competition

Both MCI and Inner City Press complain that SBC has not done enough to open its local markets to competition. Neither party, however, has offered any facts to support this contention. MCI presents a laundry list of generic and completely undocumented complaints regarding its dealings with SBC, while Inner City Press just refers to press reports making similar claims.[56] These vague claims cannot possibly satisfy the obligation of a party opposing a transfer of control to establish a factual basis for its claims.[57] Moreover, like so many other claims of the commenters/petitioners, these complaints have nothing to do with the merger, and this is not the appropriate forum for resolving them.

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[55] Consolidation in Yellow Pages Industry Continues with SBC Acquisition of SNET, 14 Yellow Pages & Directory Rep., Jan. 14, 1998, 1998 WL 9568425.

[56] MCI Comments, pp. 3-4; Inner City Press Petition, pp. 3-6.

[57] See 47 U.S.C. § 309(d)(1) ("The petition shall contain specific allegations of fact sufficient to show that . . . a grant of the application would be prima facie inconsistent with [serving the public interest, convenience, and necessity]. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."); United States v. FCC, 652 F.2d 72, 89 (D.C. Cir. 1980) (en banc) ("[Section 309(d)] . . . was intended to require 'a substantially stronger showing of greater probative value' than had been required before. The allegations must be of specific evidentiary facts, not "ultimate, conclusionary facts or more general allegations." (citations to S. Rep. No. 86-690, at 3 (1959) omitted)).

At any rate, claims that SBC has not acted in good faith to facilitate competition in its local exchange markets are just not true. Since the passage of the 1996 Act, SBC has spent over $1 billion and assigned over 3,300 employees to open its markets to competition. As a result of these activities, CLECs are operating in all seven of the states which comprise SBC's in-region territory.

There is an abundance of additional data demonstrating the depth of SBC's commitment to opening its markets. For example through the end of February 1998:

- SBC and CLECs have signed 280 interconnection agreements in all seven states, and SBC is negotiating more than 400 others;
- State PUCs have approved 214 agreements, again covering all seven states;
- More than 165 CLECs are actually in operation in SBC's territory, including 90 in Texas alone;
- More than 849,000 SBC access lines have been lost to CLECs, including over 270,000 SBC lines lost to facilities-based competitors;
- Over 280 collocation arrangements are in operation, with 250 more in process;
- SBC has provisioned more than 215,000 interconnection trunks to CLECs;
- SBC has processed more than 1.5 million service orders from CLECs.

In view of these indisputable facts, the vague and unsubstantiated complaints of MCI and Inner City Press about the status of competition in SBC's local markets should be disregarded.

4. The Merger Will Not Reduce The Number Of Local Carriers Available For Benchmarking

MCI's argument that the merger of SBC and SNET will frustrate the Commission's ability to use benchmarks for its regulatory oversight responsibilities is mistaken.[58] First, after consummation of the proposed merger, SBC and SNET will continue to submit or maintain data

[58] See MCI Comments, pp. 4-5.

on a carrier-specific basis, so there will be no decrease in the number of available benchmark comparisons. In fact, the FCC rules themselves require such carrier-specific filings.[59]

The Commission rejected a similar challenge in the SBC/Telesis Order, in which it observed that "nothing in the Communications Act or the antitrust laws requires the present number of RBOCs, or any particular number of them."[60] Similarly, nothing requires Connecticut to be served by an independent ILEC, and it is not plausible to assert that the merger will affect the Commission's ability to carry out its regulatory functions. To the contrary, as competition replaces regulation, the need for benchmarks to guide regulators is decreasing.[61]

Notwithstanding the merger of SBC and SNET, numerous ILECs will remain, and an ever-increasing number of CLECs will be emerging to establish benchmarks. It is implausible that this number of competitors could organize to resist regulation, and MCI offers no evidence to support its conclusory assertion that the merger will further such cooperation. Thus, MCI's claims regarding benchmarks should be rejected.[62]

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[59] See, e.g., Annual Reports of Carriers and Certain Affiliates, 47 C.F.R. § 43.21(a) (1997) (requiring reports on a carrier-by-carrier basis).

[60] SBC/Telesis Order, ¶ 32.

[61] Indeed, to the extent that benchmark information, such as tariffed rates, service requirements or cost data, is publicly available it may even inhibit competition. See In re Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, Second Report and Order, 11 FCC Rcd. 20,730, ¶ 37 (1996) (observing that "requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates").

[62] Nor will SNET's combination with SBC "diminish experimentation and lessen the diversity of approaches to the task of opening local exchange markets to competition." MCI Comments, p. 4. To the contrary, SNET's access to SBC's greater resources will better allow SNET to comply with the expensive competition-enhancing requirements imposed on it by state and federal law.

V. DISPUTES THAT COMMENTERS HAVE WITH SBC OR SNET ON MATTERS UNRELATED TO THE MERGER ARE PROPERLY THE SUBJECT OF OTHER PROCEEDINGS AND SHOULD BE DISREGARDED

A number of the other claims raised in the comments and petitions have nothing to do with the merits of the proposed merger. Rather, those comments or petitions seek to block or condition the merger based on disputes that others have with SBC or SNET and that will be unaffected by the merger. This transfer of control proceeding is not the appropriate forum for resolving such disputes. In any event, the allegations against SBC and SNET lack merit.

A. Omnipoint

Omnipoint, which controls a number of PCS licenses, alleges that SBC has engaged in two "anticompetitive" practices: (1) improperly refusing to provide Omnipoint with billing and collection services to support "calling party pays" ("CPP") service;[63] and (2) refusing to collocate Omnipoint's PCS antennas on existing SBC cellular towers in New England.[64]

1. Calling Party Pays

CPP refers to the controversial practice of billing airtime charges to the landline customer who places a call to a CMRS phone, rather than the traditional practice of charging the wireless customer who receives the call. Since the caller will likely have no relationship with the CMRS carrier of the receiving party, that carrier must make arrangements with the caller's carrier in order to bill for the call. Omnipoint asserts that SBC's LEC affiliates have refused to provide it with billing and collection support for CPP, while providing "joint billing" services (which Omnipoint wrongly suggests includes CPP support) for their own CMRS affiliates. It alleges

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[63] Omnipoint Petition, pp. 7-10.

[64] Id., pp. 10-11.

that this conduct constitutes unlawful discrimination under section 202 of the Communications Act, as well as "anticompetitive behavior" proscribed under the CMRS Safeguards Order.[65]

This claim fails for several reasons. First, contrary to Omnipoint's suggestion, there is no ground for a discrimination charge because SBC's LEC affiliates do not offer CPP support to SBC's CMRS affiliates. All that SBC's LEC affiliates provide is a "joint billing" capability that allows an end user who is a customer of both an SBC LEC and an SBC CMRS provider to receive a single bill. That capability, however, has nothing to do with charging a party who calls a CMRS customer for airtime. Since Omnipoint is not being discriminated against with respect to CPP, its claim under section 202 is baseless.

Second, as the Commission has made clear, billing and collection services are not covered by Title II of the Communications Act. Thus, section 202 does not even apply.[66]

Third, and even more fundamentally, there is no legal requirement for LECs to provide billing and collection services for CPP. No Commission rule requires such support, and while the Commission is studying this subject, it has merely issued a Notice of Inquiry[67] and collected comments without issuing an NPRM, much less an actual rule. Nor does the CMRS Safeguards Order – which nowhere mentions CPP – create any such rule. That Order mandates only that LECs offering CMRS service within their service regions must make available their Title II

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[65] In re Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order, 12 FCC Rcd. 15,668 (1997) ("CMRS Safeguards Order").

[66] See In re Detariffing of Billing and Collection Services, Report and Order, 102 F.C.C.2d 1150, ¶¶ 30-34 (1985).

[67] In re Calling Party Pays Service Option in the Commercial Mobile Radio Services, Notice of Inquiry, 12 FCC Rcd. 17,693 (1997).

services, facilities, and unbundled network elements provided pursuant to sections 251 and 252, to independent CMRS providers on the same terms and conditions afforded to their CMRS affiliates.[68] As noted above, however, the Commission's Report and Order in Detariffing of Billing and Collection Services establishes that billing and collection services are not title II services. Thus, nothing in the CMRS Safeguards Order creates any requirement for SBC to provide the billing and collection services Omnipoint seeks.

Finally, nothing in the record of this case would warrant singling out SNET or SBC for CPP conditions before the Commission determines whether such conditions should be imposed on all LECs. Omnipoint's demand for CPP support has nothing to do with the merits of the proposed merger, and the obligation of a LEC – if any – to provide such support will ultimately be determined in any rulemaking proceeding that may result from the current Notice of Inquiry proceeding. It is well established that such issues should be dealt with in rulemakings, not in transfer of control proceedings. For example, the Commission stated in the AT&T/McCaw merger proceeding that it "will not consider arguments in [merger] proceeding[s] that are better addressed in other Commission proceedings, or other legal fora, including the [courts] and the Congress."[69] Rather than delay the merger, the Commission repeatedly deferred consideration of issues that were within the scope of pending rulemakings, raised questions of general applicability as to warrant decision by a rulemaking, or were the subjects of pending complaint

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[68] See CMRS Safeguards Order, ¶ 38.

[69] In re Applications of Craig O. McCaw and American Tel. & Tel. Co., Memorandum Opinion and Order, 9 FCC Rcd. 5836, ¶ 123 (1994) ("AT&T/McCaw"). See also In re Commonwealth Tel. Co., Memorandum Opinion and Order, 88 F.C.C.2d 782 (1981), aff'd sub nom. Mobilfone of Northeastern Pa., Inc. v. FCC, 682 F.2d 269 (D.C. Cir. 1982); In re NR Recording and Communications, Inc., Memorandum Opinion and Order, 87 F.C.C.2d 469 (1981) (declining to consider challenges to rates that were the subject of pending state proceedings).

proceedings.[70] In particular, the FCC refused to condition that merger on changes in the Commission's resale requirements, stating that parties must argue such issues "in a rulemaking of general applicability, that provides a wider range of parties an opportunity to comment."[71]

Likewise, in Bell Atlantic/NYNEX the Commission refused to entertain two sets of proposed conditions that were the subject of pending rulemakings.[72] Similarly, in the BT/MCI proceeding[73] various parties urged the Commission to impose structural separations between MCI and its affiliated foreign carrier. The Commission refused to consider the issue because such structural separations were the subject of the then-pending Foreign Participation

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[70] See AT&T/McCaw, ¶ 32 (complaints about MFJ restrictions that apply to the petitioners but not to the applicants "are most properly addressed to the court that applies [the MFJ], or to Congress"); id. ¶ 35 (" We believe that these issues should be resolved in the context of addressing MFJ issues, rather than as part of the Commission's decision on this merger."), id. ¶ 70 (deferring consideration of equal access obligations for CMRS providers to a pending rulemaking); id. ¶ 86 (deferring to a pending rulemaking consideration of whether CMRS providers must provide, on reasonable and nondiscriminatory terms and conditions, the information that interexchange carriers need to bill their customers); id. ¶ 90 (stating that, instead of petitioning the Commission to impose regulatory parity on cellular resale through conditions on the merger, the BOCs should seek relief from the MFJ court or through "a rulemaking of general applicability"); id. ¶ 123 (refusing to consider in the merger proceeding whether AT&T/McCaw should be subject to structural separation requirements because other fora are more appropriate); id. ¶ 154 ("We believe that these pending formal complaint proceedings are a more appropriate forum for resolving issues pertaining to AT&T's treatment of resale customers.").

[71] Id. ¶ 90.

[72] See Bell Atlantic/NYNEX Order, ¶ 210 (denying AT&T's and LCI's requests for additional performance-measurement conditions because the Commission lacked the necessary record and because the "issue of evolving measurement categories and formulas is better addressed in the context of [an ongoing rulemaking], which focuses on" the specific questions); id. ¶ 220 (deferring MCI's proposed billing and collection conditions for consideration in a pending rulemaking proceeding).

[73] In re Merger of MCI Communications Corp. and British Telecomm. PLC, Memorandum Opinion and Order, 12 FCC Rcd. 15,351 (1997) ("BT/MCI").

proceedings.[74] In addition, the Commission has taken a similar stance in recent assignment decisions.[75]

Indeed, Omnipoint's attempt to create, in the context of a transfer of control proceeding, an obligation to support CPP illustrates perfectly why such issues should be dealt with only in rulemaking proceedings. The implementation of CPP would require the resolution of a number of difficult issues which have been raised in various filings submitted by numerous parties to the CPP docket.[76] It would be entirely inappropriate for the Commission to decide these issues in a transfer of control proceeding that will not offer the Commission the oportunity to develop a full

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[74] In re Rules and Policies on Foreign Participation in the U.S. Telecomm. Market, Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 7847, decided, Report and Order and Order on Recons., 1997 WL 735476 (Nov. 26, 1997), modified, Order, Dkt No. 97-142, 1998 WL 31839 (Jan. 29, 1998).

[75] See In re Applications of BBC License Subsidiary L.P., Memorandum Opinion and Order, 10 FCC Rcd. 10,968, ¶ 18 (1995) ("BBC II") (deferring to a pending rulemaking the question of how to attribute the multiple ownership interests a foreign investor holds in a licensee and stating that the applicants would be bound by the resulting rules); In re Applications of BBC License Subsidiary L.P. and SF Green Bay License Subsidiary, Inc., Memorandum Opinion and Order, 10 FCC Rcd. 7926, ¶¶ 14-15, 43-44 (1995), aff'd sub nom. BBC II (refusing to delay assignment to resolve attribution of ownership issue that "is best answered with the benefit of a full and carefully considered record in the Attribution Review proceedings"); In re Applications of Motorola, Inc. for Consent to Assign 800 MHz Licenses to Nextel Communications, Inc., Order, 10 FCC Rcd. 7783, ¶ 26 (1995) ("We agree with [the applicants] ... that the appropriate forum for addressing equal access requirements for SMR licensees is the Commission's Equal Access proceeding, and we will not prejudge the outcome of that proceeding" in the assignment decision.).

[76] Most fundamentally, the record in the Notice of Inquiry proceeding raises serious doubt about whether the Commission has the legal authority to mandate or regulate CPP service or to require LECs to provide billing and collection services for CPP. Second, the record reveals substantial disputes about whether mandating CPP service or LEC billing and collection for CPP would be good public policy.

Furthermore, the Commission would have to overcome a number of thorny problems, such as how to notify callers that they will have to pay for the call and how to create binding contracts between the caller and the terminating CMRS provider.

record on many difficult issues, will not govern the entire industry and will not provide an opportunity for participation by all interested parties.

2. Tower Collocation

Omnipoint's second alleged "anticompetitive" practice is its claim that SBC's wireless affiliate in New England has not allowed Omnipoint to place PCS antennas on preexisting cellular towers. This claim can be disposed of quickly.

First, Connecticut has enacted a statute dealing with such "tower sharing."[77] SBC will, of course, comply with that statute. Thus, with respect to SNET's wireless operations in Connecticut, this should be the end of the matter.

Second, there is no FCC rule requiring such collocation. Without such a rule, there is no basis for blocking or conditioning the merger with respect to either SNET's Connecticut wireless operations or either SNET's or SBC's out-of-state operations.[78]

Third, it is not true that SBC's wireless affiliate has refused to allow Omnipoint or others to place antennas on its towers. In fact, SBC's wireless affiliate in Boston has provided antenna space for a number of its CMRS competitors on the majority of its towers, including five PCS antennas owned by Omnipoint.[79] In addition, SBC has made space available to Bell Atlantic Mobile, Sprint Spectrum, AT&T Wireless and Nextel.

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[77] See Conn. Gen. Stat. Ann. § 16-50aa (West. Supp. 1998).

[78] Omnipoint's attempt to find such an obligation in the CMRS Safeguards Order – which does not mention tower collocation – is baseless. That Order concerns the possibility that a LEC might discriminate in favor of its CMRS affiliate and against an independent CMRS provider. It places no obligation on CMRS providers to make their own facilities available to their competitors.

[79] Moreover, while SBC prefers to trade space on its towers for space on another carrier's tower, it has been willing to lease space to PCS providers without requiring such a trade. For example, SBC's Boston affiliate has leased space to Omnipoint on a tower in Bolton, Massachusetts.

Finally, Omnipoint's complaint about collocation has absolutely no relevance to the proposed merger. As in the case of CPP, any such requirement must be imposed, if at all, only through a general rulemaking proceeding in which all interested parties can participate.[80] There is simply no basis for imposing such a requirement here.

B. PCIA/Metrocall

The Personal Communications Industry Association ("PCIA") and Metrocall, Inc. ("Metrocall") argue that the Commission should deny the Applications on the ground that SBC's charges to paging service providers for dedicated transmission facilities allegedly violate section 51.703(b) of the Commission's Rules.[81] That rule prohibits a LEC from charging telecommunications carriers for local telecommunications traffic that originates on the LEC's network. Alternatively, PCIA and MetroCall urge the Commission to condition grant of the Applications on SBC's compliance with their interpretation of section 51.703(b).

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[80] As other FCC proceedings illustrate, the issues involved in making rules to govern tower and antenna location are highly complex. See In re Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 13,494 (1997) (considering the proper balance between federal, state and local authority to regulate radio frequency emissions from FCC-regulated transmitters); In re Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Constr. of Broad. Station Transmission Facilities, Notice of Proposed Rulemaking, MM Dkt No. 97-182, 1997 WL 471642 (FCC Aug. 19, 1997) (considering the limitation and preemption of state and local zoning and land use restrictions in order to facilitate the rapid implementation of digital television service); cf. H.R. 3016, 105th Cong. (1997) (proposing to repeal limitations on state and local authority to regulate the placement, construction, and modification of transmitters and to prevent the FCC from preempting such state and local regulations); S. 1350, 105th Cong. (1997) (same). Consideration of Omnipoint's proposal to mandate tower collocation would raise equally thorny questions.

[81] 47 C.F.R. § 51.703(b) (1997).

Contrary to the overheated rhetoric of PCIA and Metrocall that SBC is a "lawbreaker"[82] and has a "complete disregard for the Commission's rules,"[83] the dispute between SBC and the paging carriers is the product of a legitimate difference of opinion as to the meaning of section 51.703(b). The dispute has nothing to do with the proposed merger, and the Commission has numerous other proceedings already pending before it regarding the meaning of section 51.703(b). The issues that PCIA and Metrocall raise should be resolved in those proceedings, and their Petitions should be dismissed.

The Commission promulgated section 51.703(b) in August 1996,[84] and questions about whether the rule precluded LECs from charging paging providers for the dedicated facilities those providers used to receive messages were raised with the Commission in a series of letters filed in spring 1997.[85] On December 30, 1997, the Chief of the Common Carrier Bureau released a letter setting forth the Bureau's view that LECs could not charge paging providers for

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[82] Metrocall Petition, p. 10.

[83] PCIA Petition, p. 1.

[84] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15,499 (1996).

[85] Letter of 4/25/97 from Southwestern Bell Telephone to Common Carrier Bureau; Letter of 5/9/97 from Southwestern Bell Telephone to Common Carrier Bureau; Letter of 5/16/97 from AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc. and PageNet, Inc. to Common Carrier Bureau. In response to those letters, the Common Carrier Bureau established a pleading cycle. Pleading Cycle Established for Comments on Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers, Public Notice, CCB/CPD Dkt No. 97-24, 1997 WL 268726 (FCC May 22, 1997).

In addition, one paging provider, TSR Paging Inc., filed a formal complaint against US West (File No. E-98-13) on December 24, 1997 for allegedly violating Section 51.703(b), and another paging provider, Metrocall, Inc. filed similar complaints on January 20, 1998 against BellSouth Telecommunications, Inc./BellSouth, Corp. (File No. E-98-14), GTE Telephone Operations (File No. E-98-15), Pacific Bell Telephone Co. (File No. E-98-16), Southwestern Bell Telephone Co. (File No. E-98-17), and US West Communications, Inc. (File No. E-98-18).

these facilities.[86] On January 29, 1998, Southwestern Bell Telephone, Pacific Bell and Nevada Bell[87] filed an application for review of that letter by the full Commission. U.S. West filed a similar application that day,[88] and Ameritech filed a similar application the next day.[89]

The issues raised by PCIA and Metrocall in their comments here have been fully briefed and argued in those proceedings, and, for the reasons discussed above, the Commission should resolve them there and not in this proceeding. Moreover, those issues are irrelevant to whether the merger between SBC and SNET will serve the public interest. Thus, the Commission should not deal with them here.

The arguments advanced by PCIA and Metrocall turn on whether section 51.703(b) requires LECs to provide paging providers at no charge with dedicated transmission facilities interconnecting the paging company facilities to the local exchange network. The Bureau Chief believes that section 51.703(b) does, and many LECs, including SBC, respectfully disagree with that interpretation. The LECs' position is that, while section 51.703(b) purports to implement

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[86] Letter of 12/30/97 from A. Richard Metzger, Jr., Chief, Common Carrier Bureau, to Keith Davis, Southwestern Bell Telephone, Kathleen Q. Abernathy, AirTouch Communications, Inc., Judith St. Ledger-Roty, Kelly Drye & Warren, Cathleen A. Massey, AT&T Wireless, Inc., and March Stachiw, AirTouch Paging, DA 97-2726.

[87] Application for Review of Southwestern Bell Tel. Co., Pacific Bell and Nevada Bell in CCB/CPD Dkt No. 97-24 (Jan. 29, 1998).

[88] Application for Review of US West, Inc. in CCB/CPD Dkt No. 97-24 (Jan. 29, 1998).

[89] Application for Review of Ameritech in CCB/CPD Dkt No. 97-24 (Jan. 30, 1998). Also on January 30, 1998, Southwestern Bell, Pacific Bell and Nevada Bell filed a petition for stay pending Commission review of the Bureau Chief's letter. A pleading cycle has been established for the applications for review and the petition for a stay. Pleading Cycle Established for Comments on Applications for Review by the Full Comm'n and Petition for Stay Pending Review of the Dec. 30, 1997 Common Carrier Bureau Letter Regarding Interconnection Between LECs and Paging Carriers, Public Notice, CCB/CPD Dkt No. 97-24, 1998 WL 39523 (Feb. 3, 1998). Comments have been received not only from the parties, but also from Sprint, USTA, Bell South, Lexington, and Chillicothe, among others.

section 251(b)(5) of the 1996 Act, that section deals only with "reciprocal compensation" between LECs and CMRS providers. Since there can be no reciprocal compensation when all traffic flows one way, as it does between LECs and one-way paging providers such as Metrocall, section 51.703(b) cannot and does not address the permissibility of imposing charges for the use by a paging company of dedicated facilities of a LEC which facilitate the one-way interconnection between the paging provider and the LEC.

Even if section 51.703(b) does apply to LEC-paging interconnection, however, that section would, by its plain terms only restrict charges for traffic and not for facilities, such as the dedicated transmission facilities at issue between the LECs and the paging providers. Any other result would require LECs to provide those dedicated transmission facilities for free and, therefore, would raise serious constitutional and other questions. SBC is just one of several LECs that disagrees in good faith with the paging providers about the meaning of section 51.703(b), and those issues are pending before the Commission. SBC will, of course, abide by whatever decision is ultimately reached in the proceedings considering this issue. Since SBC has meritorious arguments in support of its position, however, and since this dispute is unrelated to the merger and will be decided in another forum, the petitions of Metrocall and PCIA should be dismissed.

VI. SBC IS FULLY QUALIFIED TO CONTROL SNET'S WIRELESS LICENSES AND SECTION 214 AUTHORIZATIONS

A. SBC's Qualifications Are Well Established

A key consideration for the Commission in reviewing the Applications is also the most obvious: SBC is indisputably qualified to exercise control over the wireless licenses and section

214 authorizations controlled by SNET, and SBC's qualifications as a licensee cannot plausibly be questioned.

SBC is one of the country's leading telecommunications companies.[90] It is the parent of both Southwestern Bell Telephone Company, which has 15.7 million local exchange access lines in its five state region, as well as Pacific Bell and Nevada Bell, which have 17.7 million local exchange access lines in California and Nevada. SBC's wireless affiliates, Southwestern Bell Mobile Systems, Southwestern Bell Wireless, Inc. and Pacific Bell Mobile Services, constitute one of the country's most successful wireless businesses, with over 5.6 million cellular and PCS customers both within the regions served by SWBT, Pacific Bell and Nevada Bell, as well as in major out-of-region areas, including Chicago, Washington/Baltimore, Boston and Upstate New York.[91] SBC's wireless affiliates also offer consumers some of the lowest rates for cellular service in the country.[92]

In support of these activities, SBC controls literally hundreds of FCC licenses, including the same types of authorizations that are controlled by SNET. It is beyond dispute that SBC is among the most highly qualified licensees in the industry today. In the absence of any basis – in

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[90] SBC also has extensive international experience, with investments in telecommunications companies in Mexico, the UK, France, Chile, South Africa, Switzerland, Israel, Taiwan and South Korea.

[91] SBMS's cellular systems are among the largest and most complex wireless networks in the world. Most of these systems have the most advanced IS-41 and intersystem operations available today, and are among the first cellular networks to convert to digital technology.

[92] According to a 1995 survey of cellular prices in the top ten MSAs in the country, SBC's four largest cellular service areas – Chicago, Dallas, Boston and Washington – comprise 4 of the 5 lowest priced major market areas in the country, with average monthly rates that are approximately 25% less than the average rates in the other six of the nation's 10 largest market areas.

the record in this proceeding or otherwise – to question SBC's qualifications to control SNET's licenses, and in light of the procompetitive and other benefits of the merger, the Applications should be approved.

B. The Great Western Case Does Not Provide A Basis For Challenging SBC's Qualifications

Omnipoint contends that the Commission needs to consider whether Great Western Directories, Inc. v. Southwestern Bell Corp.,[93] an antitrust case against SBC which arose over a decade ago regarding the directory publishing business, raises issues regarding SBC's character.[94] The Great Western case, however, was raised by commenters opposing the SBC/Pacific Telesis merger and was fully and openly discussed by many parties, including SBC. The Commission concluded just last year that the case posed no barrier to that merger because the conduct at issue – which occurred a decade ago – was confined to Texas and had not recurred.[95]

Tellingly, Omnipoint has offered no evidence – indeed, it has not even suggested – that the conduct which was the subject of Great Western has recurred or that it has spread beyond Texas. Because nothing has changed since the Commission fully considered this issue last year, it need not pause over it here.[96]

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[93] Civ. A. Nos. 2:88-CV-218-J, 2:89-CV-003-J, 1993 WL 755366 (N.D. Tex.), aff'd in part and rev'd in part, 63 F.3d 1378 (5th Cir. 1995), reh'g granted in part and denied in part and modified, 74 F.3d 613 (5th Cir. 1996), vacated pursuant to settlement.

[94] Omnipoint Petition, pp. 2-6.

[95] SBC/Telesis Order, ¶¶ 58-63.

[96] See Bell Atlantic/NYNEX Order, ¶ 238 (declining to reconsider character allegations made by Comcast regarding Bell Atlantic's cellular operations because those allegations have "been previously reviewed and adjudicated by the Wireless Telecommunications Bureau"). See also In re Application of Continental Cablevision, Inc., and U.S. West, Inc., Memorandum Opinion and Order, 11 FCC Rcd. 16,314, ¶ 5 (1996) ("We also believe that the orderly process of license

Footnote continued on next page

Lacking any new evidence that might justify reopening this previously rejected issue, Omnipoint instead asserts that the Commission is required to apply a stricter standard of review here than it applied in analyzing Great Western in SBC/Telesis and that this stricter standard requires it to reconsider the implications of Great Western. Specifically, Omnipoint claims that the SBC/Telesis Order involved only a "section 214 review" under Title II of the Communications Act, while this proceeding requires the "far more detailed and rigorous" and "more exacting" character review necessary under Title III.[97] This claim is simply wrong. There was no section 214 application in SBC/Telesis; that proceeding involved only applications to transfer control of wireless licenses under Title III.[98] Moreover, the SBC/Telesis Order makes clear that the Commission has already conducted the "rigorous" and "exacting" review sought by Omnipoint. That Order observed that the Commission "take[s] seriously" the conduct at issue in Great Western and that it is "ready to use the specific enforcement tools that Congress has given us" – including forfeiture and/or license revocation – if necessary to deal with any possible future misconduct.[99] Since the challenged conduct was confined to one state and had not recurred for many years, however, the Commission refused to block or condition an unrelated and otherwise appropriate merger based on Great Western. It should do so again.

Footnote continued from previous page

transfers should not be delayed in order to relitigate or review issues unrelated to the transfer of CARS licenses, particularly where the petition in the instant matter is based upon arguments that have been specifically considered and rejected in another proceeding.")

[97] Omnipoint Petition, pp. 4-5.

[98] See SBC/Telesis Order, ¶ 1 (stating that the order relates to applications under section 310(d) of the Communications Act). The Applications at issue in this proceeding involve both Title II and Title III.

[99] Id. ¶ 63.

C. The Commission Has Previously Found No Evidence That SBC Exports Allegedly Anticompetive Conduct

Implicit in a number of the commenters' claims regarding alleged misconduct by SBC is the suggestion that, if the merger is approved, SBC will export its allegedly "bad" behavior to Connecticut. Just as it rejected claims that the conduct at issue in Great Western would recur elsewhere, however, the Commission found no evidence in SBC/Telesis that any other challenged conduct would be exported outside Texas.[100] The Commission should similarly reject any claims that allegedly inappropriate behavior by SBC will somehow infect SNET in Connecticut.

The efforts of the commenters to prove that "bad" behavior will be exported to Connecticut underscore the weakness of their claims. Inner City Press, for example, complains that a number of senior executives left Telesis within a year after the merger. Such personnel changes, however, are not evidence of any kind of inappropriate behavior, much less that bad behavior in one region will be repeated elsewhere.[101]

As the Commission recognized in the SBC/Telesis Order, the appropriate way to deal with such unsubstantiated claims of possible future misconduct is not to prohibit or condition mergers; it is for the Commission and state PUCs to use their normal enforcement tools to deal with misconduct when and if it occurs.[102] The same conclusion is appropriate here.

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[100] See id. ¶ 38.

[101] The only support that Inner City Press cites for this claim, as well as for a number of others, are news articles and "reports" from critics who have not themselves challenged the merger. These materials fall well short of the requirement for a petition to deny to present actual facts supported by affidavits. See note 57 above and accompanying text.

[102] See SBC/Telesis Order, ¶ 38. ("We find that reliance on these tools, in the event that they are needed at all, and on the creation of competition in the longer term, is a more appropriate prophylactic than denying or delaying the proposed transfer.").

VII. CONCLUSION

For the foregoing reasons, SBC and SNET respectfully urge the Commission to grant their Applications promptly.

Respectfully submitted,

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Dated: April 29, 1998

Exhibit 1

EXHIBIT NO. 1
To Joint Opposition of SBC and SNET

AFFIDAVIT OF JAMES S. KAHAN

STATE OF TEXAS)
) SS:
COUNTY OF BEXAR)

JAMES S. KAHAN, being duly sworn, deposes and says:

1. I am the Senior Vice President for Corporate Development of SBC Communications Inc. ("SBC"). In that capacity, I am responsible for all of the domestic and international merger, acquisition, joint venture and venture capital activities of SBC and its operating subsidiaries. I was involved in the negotiations which led to the announced merger of SBC and Southern New England Telecommunications Corporation ("SNET"). From 1993 through 1995, I was principally responsible for SBC's strategic planning, marketing, and international business development activities, and development of its long-term business growth strategies.

2. As SBC and SNET stated in their applications to transfer to SBC control of the FCC licenses and authorizations held by subsidiaries of SNET, SBC had no plans, absent the merger, to enter the local exchange business in Connecticut or to market long distance